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10 Attorneys for Plaintiffs,
11 LAFACE RECORDS LLC; CAPITOL
12 RECORDS, INC.; WARNER BROS.
13 RECORDS INC.; UMG RECORDINGS,
14 INC.; BMG MUSIC; and ARISTA
15 RECORDS LLC

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 LAFACE RECORDS LLC, a Delaware limited
20 liability company; CAPITOL RECORDS, INC.,
21 a Delaware corporation; WARNER BROS.
22 RECORDS INC., a Delaware corporation; UMG
23 RECORDINGS, INC., a Delaware corporation;
24 BMG MUSIC, a New York general partnership;
25 and ARISTA RECORDS LLC, a Delaware
26 limited liability company,

27 Plaintiffs,
28 v.
JOHN DOE,
Defendant.

CASE NO. 5:07-CV-04875-JF

Honorable Jeremy Fogel

***EX PARTE APPLICATION TO CONTINUE
CASE MANAGEMENT CONFERENCE
AND EXTEND TIME TO SERVE
DEFENDANT AND [PROPOSED] ORDER***

1 Plaintiffs respectfully request that the Court continue the case management conference
2 currently set for February 15, 2008, at 10:30 a.m. to May 16, 2008. Plaintiffs further request,
3 pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an
4 additional 90 days to serve Defendant with the Summons and Complaint. As further explained
5 below, Plaintiffs have discovered the identity of the Doe defendant in this case and the parties have
6 reached a provisional settlement; Plaintiffs thus seek additional time to amend the complaint and
7 effectuate service in the event the settlement fails. In support of their request, Plaintiffs state as
8 follows:

9 1. The initial case management conference is set for February 15, 2008, at 10:30 a.m., as
10 previously continued by the Court pursuant to the Clerk's Notice filed on December 19, 2007. The
11 current deadline for service of process is January 18, 2008.

12 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant John
13 Doe ("Defendant") on September 20, 2007. Plaintiffs did not have sufficient identifying information
14 to name Defendant in the Complaint, but were able to identify Defendant by the Internet Protocol
15 address assigned to Defendant by Defendant's Internet Service Provider ("ISP") – here, California
16 State University, Monterey Bay.

17 3. In order to determine Defendant's true name and identity, Plaintiffs filed their *Ex*
18 *Parte* Application for Leave to Take Immediate Discovery on September 20, 2007, requesting that
19 the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

20 4. The Court entered an Order for Leave to take Immediate Discovery on October 2,
21 2007, which was promptly served upon the ISP along with a Rule 45 subpoena. On November 30,
22 2007, the ISP responded to Plaintiffs' subpoena, providing Plaintiffs with identifying information
23 including Defendant's name, telephone number, and address.

24 5. Upon receipt of this information from the ISP, Plaintiffs sent a letter to Defendant on
25 December 18, 2007 notifying her of their claims for copyright infringement and encouraging her to

1 make contact to attempt to amicably resolve this matter. In response to that notification, settlement
2 discussions took place and Plaintiffs believe that a settlement has been reached. Settlement
3 documents were sent to Defendant on December 31, 2007, which have not yet been returned signed
4 by Defendant.

5 6. If Defendant returns the signed settlement documents by February 15, 2008 or shortly
thereafter, Plaintiffs will file appropriate dispositional documents with the Court. If she does not,
7 Plaintiffs plan to file a First Amended Complaint naming her individually as the defendant in this
8 case, and then proceed to serve process upon her.

9 7. Given the circumstances of this case, Plaintiffs respectfully request that the case
10 management conference be continued to May 16, 2008, or such other date as conveniences the
11 Court. Plaintiffs also request an additional 90 days to effectuate service.

12 8. Plaintiffs submit that their efforts to give written notice to Defendant of their claims
13 and subsequent efforts to resolve the case before naming her in the lawsuit constitute good cause for
14 any delay in perfecting service. *See Ritts v. Dealers Alliance Credit Corp.*, 989 F. Supp. 1475, 1479
15 (N.D. Ga. 1997) (stating good cause standard for service extensions). Moreover, unlike a traditional
16 case in which the defendant is known by name and efforts to serve can begin immediately after filing
17 the complaint, in this case Plaintiffs first had to obtain the identity of the defendant through the
18 subpoena to the ISP. This Court has discretion to enlarge the time to serve even where there is no
19 good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

21 9. Because the copyright infringements here occurred in 2007, the three-year limitations
22 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no
23 prejudice to the Defendant from any delay in serving the Complaint.

1 10. Plaintiffs will provide the Defendant with a copy of this request and any Order
2 concerning this request when service of process occurs.

3 Dated: January 17, 2008

HOLME ROBERTS & OWEN LLP

5 By: /s/ Matthew Franklin Jaksa
6 MATTHEW FRANKLIN JAKSA
7 Attorney for Plaintiffs

9 **[PROPOSED] ORDER**

10 Good cause having been shown:

11 **IT IS ORDERED** that the case management conference currently set for February 15, 2008,
12 at 10:30 a.m. be continued to May 16, 2008.

13 **IT IS FURTHER ORDERED** that, pursuant to the Federal Rules of Civil Procedure, Rules
14 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to
15 April 17, 2008.

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18 Dated: _____

19 By: _____
20 Honorable Jeremy Fogel
21 United States District Judge
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